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COMMISSION ON HUMAN RIGHTS
Intergovernmental working group of experts
on human rights of migrants
Second session
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INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Submission from the European Commission,
dated 29 January 1998

GE.98-10359

SUBJECT/OBJET: Human Rights of migrants: questionnaire.

I am sorry for being so late in sending you this information from the European Commission. In order to gain time, I am addressing it directly to yourself.

Following are a few elements of reply provided by the Commission's services in Brussels.

1. As regards figures or estimates, I would refer you to relevant publications of EUROSTAT's Migration Statistics, the last edition of which was published in 1997 (EUROSTAT is the statistical branch of the European Commission). I have requested a copy to be sent to me and I will forward it as soon as possible. Please note however that the definition of « migrants » used in these statistics is not entirely consistent with the one used by the IOM.

2. As regards measures to strengthen the promotion, protection and implementation of the human rights of migrants, there is - with the exception of legal measures - a wide range of European Union level actions and programmes in the fields to which your questionnaire refers, most notably the 1997 European Year against Racism, which covered all the areas mentioned in the questionnaire.

   To this one would need to add the wide range of supportive measures in the fields of social policy and education which the Community develops through its various actions and programmes.

Best copy available

As regards legal measures to promote, protect and implement the human rights of migrants, it is of course important to note that the Union is committed, by virtue of Article F 2 of the Treaty on European Union (the Maastricht Treaty) to « respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ».

While at the present stage of the development of European Community law, the Community as such is not empowered to develop legal measures to specifically protect the human rights of migrants, this is expected to change with the ratification of the Treaty of Amsterdam (the successor to the Maastricht Treaty) which empowers the Union to « take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation ».

3. As regards manifestations of racism, xenophobia and other forms of discrimination against migrants, it is not at present possible to provide quantifiable data. However, on 2 June 1997, the Council of European Union adopted a Regulation establishing a European Monitoring Centre on Racism and Xenophobia, whose prime objective will be « to provide the Community and its Member States (...) with objective, reliable and comparable data at European level on the phenomenon of racism, xenophobia and anti-Semitism ». I attach a copy of the relevant regulation. This European Monitoring Centre on Racism and Xenophobia (called in French « Observatoire européen des phénomènes racistes et xénophobes ») is currently in the process of being set up in Vienna and should be operational shortly.

4. As regards the ratification of the International Conventions mentioned under this point, these are matters falling within the competence of the Member States, not the Union itself.

I hope that this information is useful. Please don't hesitate to give me a call if you need anything else.

Bien à vous

B. Jacob

Bärbel JACOB

Document's text:
COUNCIL REGULATION (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia
THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 213 and Article 235 thereof,
Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee (3),
Having regard to the opinion of the Committee of the Regions,
(1) Whereas the Community must respect fundamental rights in formulating and applying its policies and the legal acts which it adopts; whereas, in particular, compliance with human rights constitutes a condition of the legality of Community acts;
(2) Whereas the collection and analysis of objective, reliable and comparable information on the phenomena of racism, xenophobia and anti-Semitism are therefore necessary at Community level to provide full information to the Community on those phenomena so as to enable the Community to meet its obligation to respect fundamental rights and to enable it to take account of them in formulating and applying whatever policies and acts it adopts in its sphere of competence;
(3) Whereas the importance of respect for human rights has been stressed on many occasions by the Community institutions and the Member States;
(4) Whereas in a Joint Declaration of 5 April 1977 (4) the European Parliament, the Council and the Commission stressed 'the prime importance they attach to the protection of fundamental rights` and declared that 'in the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect those rights`;
(5) Whereas on 11 June 1986, the European Parliament, the Council, the representatives of the Member States meeting within the Council and the Commission adopted a Joint Declaration on racism and xenophobia (5) stressing the 'importance of adequate and objective information and of making all citizens aware of the dangers of racism and xenophobia, and the need to ensure that all acts or forms of discrimination are prevented or curbed`;
(6) Whereas on 29 May 1990 the Council and the representative of the governments of the Member States, meeting within the Council, adopted a Resolution on the fight against racism and xenophobia (6);
(7) Whereas on 5 October 1995 the Council and the representatives of the governments of the Member States, meeting within the Council, adopted a Resolution on the fight against racism and xenophobia in the fields of employment and social affairs (7) and on 23 October 1995 they adopted a Resolution on the response of educational systems to the problems of racism and xenophobia (8);
(8) Whereas on 15 July 1996 the Council, acting on the basis of Article K.3 of the Treaty on European Union, adopted a Joint Action concerning action to combat racism and xenophobia (9);
(9) Whereas on 23 July 1996 the Council and the representatives of the governments of the Member States, meeting within the Council, adopted a Resolution concerning the European Year against Racism (1997) (10);
(10) Whereas the European Council meeting in Corfu on 24 and 25 June 1994 determined to step up efforts to define, at European Union level, a global strategy aimed at combating acts of racist and xenophobic violence; whereas to this end it set up a Consultative Commission charged with making recommendations on combating racism and xenophobia;
(11) Whereas the European Council meeting in Cannes on 26 and 27 June 1995 called on the

Consultative Commission to extend its work in order to study, in close cooperation with the Council of Europe, the feasibility of a European Monitoring Centre on Racism and Xenophobia;
(12) Whereas the conclusions of this feasibility study were submitted to the European Council meeting in Florence on 21 and 22 June 1996;
(13) Whereas the European Council meeting in Florence reaffirmed the Union's determination to combat racism and xenophobia with the utmost resolve and approved the principle underlying the establishment of a European Monitoring Centre;
(14) Whereas in order to carry out this task of collecting and analysing information on racism, xenophobia and anti-Semitism as well and as independently as possible and in order to maintain close links with the Council of Europe, it is necessary to establish an autonomous body, the European Centre on Racism and Xenophobia (Centre), at Community level with its own legal personality;
(15) Whereas the phenomena of racism, xenophobia and anti-semitism involve many complex, closely interwoven aspects which are difficult to separate; whereas, as a result, the Centre must be given the overall task of collecting and analysing information concerning several of the Community's spheres of activity; whereas the Centre's task will concentrate on areas in which sound knowledge of those problems is particularly necessary for the Community in its activities;
(16) Whereas racism and xenophobia are phenomena which manifest themselves at all levels within the Community: local, regional, national and Community, and therefore the information which is collected and analysed at Community level can also be useful to the Member States' authorities in formulating and applying measures at local, regional and national level in their own spheres of competence;
(17) Whereas therefore the Centre will make the results of its work available to both the Community and the Member States;
(18) Whereas, in the Member States, there are numerous outstanding organizations which study racism and xenophobia;
(19) Whereas the coordination of research and the creation of a network of organizations will enhance the usefulness and effectiveness of such work;
(20) Whereas, in order to enhance cooperation and avoid overlap or duplication of work, the tasks assigned to the Centre pre-suppose close links with the Council of Europe, which has considerable experience in this field, as well as cooperation with other organizations in the Member States and international organizations which are competent in the fields related to the phenomena of racism and xenophobia;
(21) Whereas the Centre will itself be able to decide on the administrative arrangements for cooperating with those organizations; whereas, on the other hand, it is for the Community to conclude, on behalf of the Centre, an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Centre; whereas the same will apply to the conclusion of any agreements with other international organizations or with third countries which may prove necessary for the Centre to carry out its tasks;
(22) Whereas the protection of personal data which are processed and exchanged by the Centre must be ensured in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (11);
(23) Whereas the Centre must enjoy maximum autonomy in the performance of its tasks;
(24) Whereas the Court of Justice must have jurisdiction to hear and determine, pursuant to an arbitration clause, disputes regarding the contractual liability of the Centre as well as disputes on the non-contractual liability of the Centre; whereas the Court must also have jurisdiction to rule on actions brought against the Centre under the conditions laid down in Article 173 of the Treaty;
(25) Whereas this Regulation might, where appropriate, be adapted on expiry of a three-year period, with a view to deciding whether or not to modify or extend the Centre's tasks, more especially depending on any changes in Community powers;
(26) Whereas the powers provided for in Article 213 of the Treaty to collect and analyse information on several of the Community's areas of activity do not permit such information to be collected through a specialized, autonomous body with its own legal personality; whereas Article 235 must therefore also be used as the legal basis for the establishment of such a body and to enable the information to be transmitted to Community institutions and bodies and to the Member States,
HAS ADOPTED THIS REGULATION:

Article 1
A European Monitoring Centre on Racism and Xenophobia (hereinafter referred to as 'the Centre') is hereby established.

Article 2

Objective and tasks

1. The prime objective of the Centre shall be to provide the Community and its Member States, more especially within the fields referred to in Article 3 (3), with objective, reliable and comparable data at European level on the phenomena of racism, xenophobia and anti-Semitism in order to help them when they take measures or formulate courses of action within their respective spheres of competence.

2. The Centre shall study the extent and development of the phenomena and manifestations of racism, xenophobia and anti-Semitism, analyse their causes, consequences and effects and examine examples of good practice in dealing with them. To these ends, in order to accomplish its tasks, the Centre shall:

(a) collect, record and analyse information and data, including data resulting from scientific research communicated to it by research centres, Member States, Community institutions, international organizations - particularly those referred to in Article 4 (1) - and non-governmental organizations;

(b) build up cooperation between the suppliers of information and develop a policy for concerted use of their databases in order to foster, where appropriate at the request of the European Parliament, the Council or the Commission, the wide distribution of their information;

(c) carry out scientific research and surveys, preparatory studies and feasibility studies, where appropriate, at the request of the European Parliament, the Council or the Commission. In doing so, the Centre shall take account of already existing studies and other activities (conferences, seminars, ongoing research, publications) especially of those centres and organizations with which it is linked in the European Racism and Xenophobia Information Network (Raxen), in order to avoid duplication and guarantee the best possible use of resources. It shall also organize meetings of experts and, whenever necessary, set up ad hoc working parties;

(d) set up documentation resources open to the public, encourage the promotion of information activities and stimulate scientific research;

(e) formulate conclusions and opinions for the Community and its Member States;

(f) develop methods to improve the comparability, objectivity and reliability of data at Community level by establishing indicators and criteria that will improve the consistency of information;

(g) publish an annual report on the situation regarding racism and xenophobia in the Community, also highlighting examples of good practice, and on the Centre's own activities;

(h) set up and coordinate a European Racism and Xenophobia Information Network (Raxen) consisting of the Centre's own central unit, which shall cooperate with national university research centres, non-governmental organizations and specialist centres set up by organizations in the Member States or international organizations referred to in Article 7;

(i) facilitate and encourage the organization of regular round-table discussions or meetings of other existing, standing advisory bodies within the Member States, with the participation of the social partners, research centres and representatives of competent public authorities and other persons or bodies invovled in dealing with racism and xenophobia. The Centre shall take the findings of the national round-table discussions or of other existing, standing advisory bodies into account in its annual report on the situation regarding racism and xenophobia in the Community.

Article 3

Working methods and areas of activity

1. The Centre shall carry out its tasks within the competencies of the Communities and in the light of the objectives adopted in its annual programme and with due regard to the available budgetary resources.

2. In pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by the Community institutions and by other institutions, bodies and competent international organizations, particularly the Council of Europe, and shall ensure through close cooperation with the Council of Europe that it provides added value.

3. The information and data to be collected and processed, the scientific research, surveys and studies to be conducted or encouraged shall be concerned with the extent, development, causes and effects of the phenomena of racism and xenophobia, particularly in the following fields:

(a) free movement of persons within the Community;

(b) information and television broadcasts and the other media and means of communication;

(c) education, vocational training and youth;

(d) social policy including employment;

(e) free movement of goods;
(f) culture.

Article 4

European Racism and Xenophobia Information Network (Raxen)
1. To enable the network provided for in Article 2 (2) (h) to be established as rapidly and efficiently as possible, the Member States shall forward to the Centre a list of the centres and organizations of which they are aware referred to in that Article.
2. Taking into account the list referred to in paragraph 1, the Centre's Management Board shall invite the competent organizations in the fields related to the phenomena of racism and xenophobia or those organizations the principal aim of which is the analysis of those phenomena, to be parties to Raxen.
3. The Centre may enter into contractual relations, in particular subcontracting arrangements, with the organizations referred to in paragraph 2, in order to accomplish any tasks which it may entrust to them.
The Centre may also enter into contractual relations, on an ad hoc basis and for specific tasks, with bodies which are not part of Raxen.
The allocation of such tasks shall appear in the Centre's annual programme.

Article 5

Protection and confidentiality of personal data
1. The Centre may collect personal data only for the purposes of carrying out its tasks as provided for under this Regulation. The Centre shall apply to its processing and exchange of personal data under this Regulation the provisions laid down in Directive 95/46/EC. To this effect, rules implementing these provisions shall be adopted, in particular with regard to the rights of the individuals concerned, the confidentiality and security of processing, suitable safeguards for rendering data anonymous before disclosure, and the internal supervision of processing.
2. The implementing rules referred to in paragraph 1 shall be published in the Official Journal of the European Communities. The Centre may not process pesonal data before the entry into force of those rules and unless a supervisory authority within the meaning of Article 28 of Directive 95/46/EC has been set up and is operative.
Pending the appointment of any such authority or authorities set up for the Community institutions and bodies, the Centre's activities as regards data protection rules shall be supervised by the Ombudsman provided for in Article 138e of the Treaty, in the context of the tasks allotted to him by that Treaty.
3. Until the date of implementation of Directive 95/46/EC, where, under the provisions of this Regulation, the Member States transmit or receive personal data, they shall apply their respective national data-protection laws to the processing of such data.
Until the abovementioned date, a Member State which has transmitted data to the Centre, can object to the transmission of these data to another Member State or submit that transmission to the fulfilment of conditions, if no data protection standard equivalent to that of Directive 95/46/EC is guaranteed by the receiver for the processing of the transmitted data.
In any event, personal data collected by the Centre and transferred by it to the Community or the Member States shall not be filed and subsequently used by the latter in a way incompatible with the purposes for which they were collected by the Centre.
4. Member States and national bodies cooperating with the Centre shall be under no obligation to provide information classified as confidential under their national law.

Article 6

Legal personality and capacity
The Centre shall have legal personality. It shall enjoy, in each of the Member States, the most extensive legal capacity accorded to legal persons under their laws. In particular, it may acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 7

Cooperation with national and international organizations
1. To help it carry out its tasks, the Centre shall cooperate with organizations in the Member States or international, governmental or non-governmental organizations competent in the field of racist and

xenophobic phenomena.
2. The administrative arrangements for the cooperation referred to in paragraph 1 shall be subject to the approval of the Management Board.
3. The Centre shall coordinate its activities with those of the Council of Europe, particularly with regard to its programme of activities pursuant to Article 8 (3) (a). To this end, the Community shall, in accordance with the procedure provided for in Article 228 of the Treaty, enter into an agreement, on behalf of the Centre, with the Council of Europe for the purpose of establishing close cooperation between the latter and the Centre. This agreement shall include the appointment by the Council of Europe of a person to sit on the Centre's Management Board.
Should agreements with other international organizations or with third countries prove necessary for the Centre to carry out its tasks efficiently, the Community shall, following the same procedure as mentioned above, enter into such agreements, on behalf of the Centre.

Article 8

Management Board
1. The Centre's Management Board shall be composed of one independent person appointed by each Member State, one independent person appointed by the European Parliament, one independent person appointed by the Council of Europe pursuant to Article 7 (3), and a representative of the Commission. The members of the Management Board shall be persons with appropriate experience in the field of human rights and analysis of racist, xenophobic and anti-Semitic phenomena.
Each member shall have a deputy appointed on a similar basis.
2. The names of the members and deputy members of the Management Board shall be notified to the Commission for publication in the Official Journal of the European Communities. Their term of office shall be three years, which shall be renewable once. The Management Board shall elect its Chairman and Vice-Chairman and the other members of the Executive Board referred to in Article 9. Each member of the Management Board, or in his absence, his deputy, shall have one vote. Decisions shall be taken by a two-thirds majority of the votes cast. The Chairman shall vote. The person appointed by the Council of Europe may not vote on decisions referred to in points (d) and (e) of paragraph 3.
3. The Management Board shall take the decisions necessary for the operation of the Centre. In particular, it shall:
(a) determine the Centre's annual programme of activities in accordance with the budget and the available resources; this programme may be reviewed when necessary during the year;
(b) adopt the Centre's annual report and its conclusions and opinions and forward them to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Committee of the Regions; it shall ensure publication of the annual report;
(c) appoint the Centre's Director;
(d) adopt the Centre's annual draft and final budgets;
(e) approve the accounts and give the Director discharge.
4. The Management Board shall adopt its rules of procedure. The Board shall meet, as convened by its Chairman, at least twice a year.

Article 9

Executive Board
1. The Executive Board shall be composed of the Chairman of the Management Board, the Vice-Chairman and a maximum of three other members of the Management Board, including the person appointed by the Council of Europe and the Commission representative.
2. The Executive Board shall supervise the work of the Centre, monitor the preparation and execution of programmes and prepare the meetings of the Management Board with the assistance of the Centre's Director. The Executive Board shall also perform any task entrusted to it by the Management Board, in accordance with the latter's rules of procedure.

Article 10

Director
1. The Centre shall be headed by a Director appointed by the Management Board on a proposal from the Commission for a period of four years, which shall be renewable.
2. The Director shall be responsible for:
(a) performance of the tasks referred to in Article 2 (2);

(b) preparing and implementing the Centre's annual programme of activities;
(c) preparing the annual report, conclusions and opinions as referred to in this Regulation;
(d) all staff matters and matters of day-to-day administration.
3. The Director shall be accountable for the management of his activities to the Management Board and shall attend its meetings and the meetings of the Executive Board.
4. The Director shall be the Centre's legal representative.

Article 11

Staff
1. The staff of the Centre shall be subject to the Regulations and Rules applicable to officials and other servants of the European Communities.
2. The Centre shall exercise in respect of its staff the powers devolved to the appointing authority.
3. The Management Board shall, in agreement with the Commission, adopt the appropriate implementing rules.

Article 12

Budget
1. Estimates shall be drawn up of all the Centre's revenue and expenditure for each financial year, which shall correspond to the calendar year, and shall be entered in the Centre's budget.
2. By 15 February each year at the latest, the Director shall draw up the preliminary draft budget for the following financial year. The preliminary draft budget shall cover the operating expenditure and programme of activities scheduled for the following financial year. The Director shall submit the preliminary draft, together with an establishment plan, to the Management Board.
3. The revenue and expenditure shown in the budget shall be in balance.
4. The revenue of the Centre shall, without prejudice to other resources, comprise:
(a) a subsidy from the Community, entered under a specific heading in the general budget of the European Communities ('Commission` section);
(b) payments received for services rendered;
(c) any financial contributions from the organizations referred to in Article 7;
(d) any voluntary financial contributions from the Member States.
5. The Centre's expenditure shall include staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to contracts concluded with institutions or bodies party to Raxen and with third parties.
6. The Management Board shall adopt the draft budget and forward it to the Commission. On this basis, the Commission shall determine the corresponding subsidy estimates to be entered in the preliminary draft general budget of the European Communities, which it places before the Council pursuant to Article 203 of the Treaty.
7. The Management Board shall adopt the Centre's final budget before the beginning of the financial year, adjusting it where necessary to the Community subsidy and the Centre's other resources.
8. The Director shall implement the Centre's budget.
9. Monitoring of the commitment and payment of all the Centre's expenditure and of the establishment and recovery of all the Centre's revenue shall be carried out by the Commission's Financial Controller.
10. By 31 March each year at the latest, the Director shall send the Commission, the Management Board and the Court of Auditors the accounts for all the Centre's revenue and expenditure in respect of the preceding financial year.
The Court of Auditors shall examine these accounts in accordance with Article 188c of the Treaty.
11. The Management Board shall give a discharge to the Director in respect of the implementation of the budget.
12. The Management Board shall, after consulting the Commission and the Court of Auditors, adopt the internal financial provisions specifying in particular the arrangements for establishing and implementing the Centre's budget.

Article 13
The translation service required by the operation of the Centre shall, in principle, be provided by the Translation Centre for bodies of the European Union established by Regulation (EC) No 2965/94 (12).

Article 14

Privileges and immunities
The Protocol on the Privileges and Immunities of the European Communities shall apply to the Centre.

Article 15

Jurisdiction of the Court of Justice
1. The contractual liability of the Centre shall be governed by the law applicable to the contract in question.
The Court of Justice shall have jurisdiction pursuant to an arbitration clause contained in a contract concluded by the Centre.
2. In the case of non-contractual liability, the Centre shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Centre or its servants in the performance of their duties.
The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.
3. The Court of Justice shall have jurisdiction in actions brought against the Centre under the conditions provided for in Article 173 of the Treaty.

Article 16

Reporting arrangements
During the third year following the entry into force of this Regulation, the Commission shall forward to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a progress report on the Centre's activities, together with proposals, if appropriate, to modify or extend its tasks, taking into account, in particular, the development of Community powers in the field of racism and xenophobia.

Article 17

Entry into force
This Regulation shall enter into force on the day following the date of the decision by the competent authorities on where the seat of the Centre should be located.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Luxembourg, 2 June 1997.
For the Council
The President
H. VAN MIERLO

(1) OJ No C 78, 12. 3. 1987, p. 15.
(2) OJ No C 132, 28. 4. 1997.
(3) OJ No C 158, 26. 5. 1997, p. 9.
(4) OJ No C 103, 27. 4. 1977, p. 1.
(5) OJ No C 158, 25. 6. 1986, p. 1.
(6) OJ No C 157, 27. 6. 1990, p. 1.
(7) OJ No C 296, 10. 11. 1995, p. 13.
(8) OJ No C 312, 23. 11. 1995, p. 1.
(9) OJ No L 185, 24. 7. 1996, p. 5.
(10) OJ No C 237, 15. 8. 1996, p. 1.
(11) OJ No L 281, 23. 11. 1995, p. 31.
(12) OJ No L 314, 7. 12. 1994, p. 1.
(13) OJ No L 314, 7. 12. 1994, p. 1.